1950

File No. OLag/50

Legal Department

A BRANCH

Subject:—

opinions under the Land Acquisition Act, 1894

P 79 E

O Lag/1950

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C O N T E N T S.

Legal Department File No. O Leg /1950

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35-37

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Office of the R.L.A.

Continuation of acquisition proceedings pending in Baroda under its own law before merger Land Acquisition Act, 1894.

By para. 3 of the B...ia State (Application of Laws) Order, 1949, the Land Acquisition Act, 1894 and all notifications orders etc. made under the same are extended to the Baroda State. By para. 5(i)(e) the Baroda Law corresponding to the Land Acquisition Act is repealed. Similarly all orders, notifications etc, under the enactment repealed are repealed. Sub-para. (iii) of para. 5 provides that the repealby this order of any such enactment notification, scheme, rule, by-law or order shall not affect the validity, invalidity effect or consequence of anything already done or suffered -------- or any remedy or proceeding in respect thereof etc. It is clear from these provisions that although the Baroda Land Acquisition Act is repealed and the Land Acquisition Act, 1894 is applied to the Baroda, all notifications published thereunder must be deemed to have been validly issued under the Land Acquisition Act 1894 as applicable to the Bombay State, and there is no legal objection to the Land Acquisition Officer proceedingwith the pending acquisition cases. In the draft reply instead of stating that "it was distinctly understood etc." it should be stated that the notifications issued under the Baroda Land Acquisition Act have been expressly saved and are deemed to have been issued under the Land Acquisition Act, 1894.

P.T.O.

S.O. P.M. Lad
S/4

O.C.

Memorandum of Legal Affairs.

U.N. No N.D. No. 4841 dated the 10th April 1950.

VOP.

8.6.56.

Office of the E.L.A.

Land Acquisition Act, 1894, Sections 11 and 12(1): Payment of compensation to Inamdars of Gondghar and Mendadi in Janjira State for acquisition of Inam Lands.

It appears that lands measuring 4 Acres and 9 Gunthas from the villages of Mhasap, Bhave, Khanloshi, Gondghar and Mendadi in Mhasla Mahal of the Janjira State were acquired for Wadavali-Mendadi Road. The Sadar Tahasildar, Janjira was appointed Land Acquisition Officer, under orders of the State Government. He declared the award on 1-2-1947. Out of the five villages mentioned above Gonghar and Mendadi are Inam villages. The Land Acquisition Officer has declared the award in respect of the Inam villages in the name of the respective Inamdars. The totalamount of compensation comes to Rs. 9.423-8-6. The amount apportioned to the Inamdar of Ghondghar is Rs. 3,184-1-0 and to the Vahiwatdars of the Masjid Rs. 426-15-0 ~~amtxt~~ The Inamdar of Mendadi is awarded Rs. 3,406-14-0, The remrest of the amount is payable to the occupants of the lands. Under Rule 1 of the Inam Rules of the State in respect of Inam villages the Inamdar is entitles to receive the income of the Inam villages he having no right to alienate the Inam nor to mortgage it. The Government of the State is supposed to be the owner of the inamlands and ~~what is supposed to be the owner of the inam lands~~ and what is alienated is the revenue of the village. Accordingly the Inamdar is not entitles to receive the amount of compensation awarded by the Land Acquisition Officer. Consequently the Collector call d f r the papers. The amounto of Compensation has not so far been paid to any body. According to the State's custom

every award required the previous sanction of the Diwan. No sanction has been accorded to this award by the Diwan.
According to the Collector the Inamdar is not entitled to any compensation. As the case papers were submitted to H.H. the Nawab of Janjira for orders the case has been submitted by the Collector to Government for consideration and orders The R.L.A. is requested to advise.

2. The point material for consideration appears to be that the Inamdar is not entitles to compennation for the lands, but obviously the Inamdar is entitled to the revenue of the village and as such it is an interest in the land. Consequently, he is entitled to compensation on account of the loss of revenue caused to him by the acquisition of the land. He cannot, however, be paid compensation for the land, for what is alienated to him is not the land but the revenue. From the award made in this case at page 9 ante it appears that that the Land Acquisition Officer has assessed compensation payable to the Inamdar for the land itself instead of for the loss of revenue caused to him b the acquisition of the land Consequently, the very basis of compensation being erroneous the award made by him is not correct.

3. Although the Land AcquisitionOfficer has made the award it appears according to the State rules, it would be not be effective until it has received the sanction of the Nawab If so, the award cannot be deemed to have been filed with hin the meaning of sub-section (1) of section 12 of the Land Acquisition Act until it has received the sanction of the Nawab which power is now exercisable by Government by virtue of the provise to clause 5 of the Indian States (Application of Laws) Order 1948. Government may, thereore refuse sanctio to the award and ask the Collector to hold a fresh inquiry under section 11 and determine

determine the compensation payable to the Inamdar on account of the loss of revenue of land acquired by Government.

Sd/- P.M. Lad.
5/4

o.s.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4592 dated the 4th April 1950.

VGP.

8-8-56.

R.I.No. 5660 dt. 3-4-50

Submitted.

Please see R.D. note at p. 13 and the draft circular at p. 23 of R.D. papers slip D 2388/49. The draft circular is shown to the R.L.A. before issue.

2. The new sec. 52A of the Land Acquisition Act, 1894 added by Bom.Act XXXV of 1949 authorises the Collr. to delegate any of his powrers of functions under the Act to any Officer not below the rank of a Mamlatdar or to a Land Acquisition Officer specially appointed by the State Govt. in this behalf. It is not therefore necessary for the Govt. to authorise the Addl Spl. Deputy Collrs, under sec 4(2) of the Land Acquisition Officer of the Distt. or Dist. Act. In view of this section it is also not necessary for Govt. to amend notifications as in the past issued under secs. 4 and 6 whenever it is not possible for any particular officer mentioned in the notifications to perform the functions of a Collr. The view expressed in the draft Circular at p. 23 of R.D. file 2355/49 is correct.

Sd/- P.S. Nadkarni.
24/4

RLA

P.M. Lad
25/4

VGP.
8-6-50. U.O.R. to R.D. No 5664 dt. 26/4/50

Office of the R.L.A.

Return of Land acquired to the owner Land Acquisition Act, 1894 section 8.

Since the land under S. No. 112 (2 C.4 ans 12 p.) has been notified under section 6 of the Land Acquisition Act, 1894 with the urgency clause and possession of the land is already taken it is not possible ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ now to withdraw the acquisition proceedings nor would it be possible to surrender possession without any legal formality. Before returning the land to the owner a document may be taken from him agreeing to forego compensation in return for the grant of the land to him and then a sanad may be issued by Government in his favour (Cf. A.I's opinion dated the 19th April 1942).

S/- P.H.Lad.
9/3

O.C.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 3326, dated the 10th March 1950

VGP.

6-6-56.

R.I. No. 5162 dated 11-4-1950

Submitted.

Please see L.C. Question No. 923 proposd to be put in by Mr. Gurarao N. Desai, M.L.A. R.D. has proposed the draft replies to questions 5, 6, and 7 and 8. In view of portion marked 'A' on p. 9 of R.D. file No. 1879/24-IV R.D. is of the view that there is no objection to the Acquisition Officer consulting the consulting Surveypr to Govt. so long as in the award itself the Acquiring Officer makes it clear that he has awarded what he thinks fair and not that the Consulting Surveyor or Govt. has directed him to award any particular sums. The R.L.A is requested to see whether draft replies to (5) (6), (7) and (8) on pp. 329 -30 are in order or not.

2. Under the Land Acquisition Act the Collector is the persona designate to make the award. He is to make the award and none else. As he is not acting as a judicial officer in making it he is at liberty and bound for the purpose of forming a true estimate of what in his opinion is the compensation to be awarded to take into account all the available information at his disposal. Although there can be no objection to the authorities to whom the preliminary estimate ~~to the authorities to whom the preliminary~~ estimate has been reported, to laying before the Collector any further information in their possession regarding the proper value of the property, it is improper and ultra vires to issue instructions to the Collector as to the matters he should take into account in assessing the compensation or that he should re-examine the case in the light of instructions received. Under the section the award has to be of such a sum as in the opinion of the Collector and no other person would be fair and proper compensation that should be allowed for the land. Where, therefore, the award made by the Collector is based on "instructions" issued by the Commissioner, it cannot be sustained.

Similarly it has been held that where a Revenue Commissioner had issued a Circular which directed that the Deputy Commissioner might require all cases to be referred to him before an award was given whether it was proposed to him exceed the original estimate or not and that the Special Officer should make his award according to the instructions received from the Deputy Commissioner, that the circular was repugnant to the Act and therefore was invalid. (See Om Prakash) Land Acquisition Act, 1942, p. 163-164). By G.M.R.D. No. 1870/24, dated 9-12-1936 Govt. dicted paras. 142 to 146 of the Land Acquisition Manual and the G.R. was circulated to all officers for information and guidance. Under these orders the acquiring officer is required to submit his proposed award to the Collector confidentially and to consult the Consulting Surveyor and after giving full consideration to their views he has to complete his award a state fully the grounds on which he bases it. The opinion of the Consulting Surveyor is not treated as confedential but is recorded in the evidence on which the award is based. The Acquiring Officer has to draw up and sign the award. He must award that he thinks right. These instructions are confidential and reference in replies to question to the fact that the draft award is shown to the Colnsulting Surveyor who is an expert in valuation matters in accordance with the general instructions issued by Govt. would not be objectionable in view of the principles established by judicial decisions which are stated above. The draft replies appear to be generally in order but the following sentence may be added at the end of the reply :-

"Although it is open to the Special Land Acquisition to take into consideration
Officer the points raised by the Consulting Surveyor
he has to exercise his own judgement and award what he thinks right.

P.S. Kadkarni.

RLA.

VOP. 8-6-56.

Office of the R.L.R.

No question of law arises in this case. However, xxxx a revised draft of the answer to questions 5 to 8 is enclosed herewith.

S/- P.K. Lad.
4/5

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6154, dated the 5th May 1950.

VGP.
8-6-56.

Question No.	Answers.
Nos. 5 and 6.	Before completing his award the Acquiring Officer is expected to obtain the opinion of the Consulting Surveyor with a view to record it in the other evidence on which the award is based. For that purpose a reference was made to the Consulting Surveyor. The authority for this procedure is contained in confidential instructions which Government do not think it expedient to disclose.
No. 7	The reference described in the answer to Questions 5 and 6 was made six months ago.
No. 8	Yes. There was some delay.

Office of the R.L.A.

Compensation payable here land is taken possession of before completion of acquisition proceedings and Acquisition Act, 1894.

sections 11,16.

In the absence of an agreement with the owner possession of land cannot be taken except where it is permitted either under orders of Government. Under section 17 or in due course after an award has been made under section 16 (seepara 84 of the Land Acquisition Manual by Anderson page 22). In the present case only a notification under section 4 is issued, (See R.D. Notification No. 8106/45, dated 27-12-49 Bombay Government Gazette Part I dated 5-1-1950 page 6). It is only after a notification undersection 6 is issued and award is made under section 11 that possession of the land could have been taken under section 16. After the land acquisition proceedings are completed and possession is taken the owner will have to be paid compensation as provided in the award. Compensation or rent payable before that date will have to be settledwith the owner by negotiation. R.L.A.'s opinion No. 11470, dated 1-12-1947 is not applicable in this case.

S/d. P.M. LAD
3/5

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6066 dated 3rd May 1950

VCP.

8-6-56.

Legal Department.

R.L.No. 3265 dated 24.2.1950

Submitted.

Pl. see A.G.'s opinion No. 23 dated 9.9.1949 and the Statement of the Case prepared by the R.L.A (pp.53-65 ante). Subsequently Addl. Secy. L.D. discussed the case with Secy R.D. and advised that no legislation is necessary to carry out the object in view and R.D. by executive orders can lay down the policy which should be followed in such cases. (p. 120 ante). Thereafter the matter was placed before the Cabinet. The decision of the Cabinet is that the R.L.A. should be asked to give a definite decision as to the legal feasibility of acquisition and also for suggestion any legislative or other remedies to achieve the object in view i.e. to eliminate communalism or exclusion on the ground of community language or location in such institutions. As regards the first point the A.G. has already expressed his view concurring with the R.L.A. that it would not be legally feasible to acquire the Hindu Swimming Bath and Beat Club. As regards the second point, B Branch may see.

R.L.A. Additional Secretary.

R.L.A. may see first before the file is transferred to B.

R.K. 2/3

R.L.A. The file may be transferred to branch and when Additional Sec. has seen We shall discuss.

Sd. P.M. Lad.
7/3

Additional Sec.

Mr. Amen who gave the opinion as acting
Advocate General may be considered.

Sd. P.M.Lad.
9/3

(and Mr. Amin M.P.)

ner to the Adv. General, Bombay No. 3598 dt. 15-3-1950.

VOP.

No. 12 of 1950.

Advocate General's Chambers,
High Court,
Bombay, the 26th May 1950.

Re Pranshikhlal Mafatlal Hindu Swimming Bath.

O p i n i o n

By virtue of the provisions of the Land Acquisition Act, 1894, it is open to the State Government to notify for acquisition and acquire any land needed for a "public purpose". The definition is an inclusive one, and innumerable purposes not specifically mentioned would fall within it. Any purpose intended to benefit the public generally, or a section of the public as opposed to the particular interest of individual, is a public purpose. It is more or less in the discretion of Government to determine what is a public purpose. The proposition now under consideration is to acquire the abovementioned swimming bath premises for conversion thereof into a bath for the public generally instead of for a section of the public, to which the use of it is at present restricted. The land in question has not been previously acquired for a public purpose. It has been granted under an lease to the Trustees by the Government for use in a particular manner. The institution has been characterised by the High Court as one of public charitable nature which it in fact is.

I see from the File some controversy as to whether an acquisition in the circumstances for a public purpose or for enlarging a public purpose. To my mind, no such question arises. The property in question is private property, as much as other private property. Government as I have

said is not acquired it for its present purpose. I can visualise cases where a building held by trustees as a public charitable trust might have to be acquired and demolished for some public purpose of a totally different nature, e.g. the erection of an entirely new building for Government offices, or a like object. Clearly, in such an event, the powers under the Land Acquisition Act would be well exercised. The Hindu Swimming Bath is on no different footing, and assuming that it has to be acquired for use as a Police School Lad or shd to be acquired for erecting a building for Government offices, the consideration that it is being used for a limited public purpose could not stand in the way. So long as the acquisition is for a public purpose, it is to my mind, immaterial what prupose it is being used for at present. The quotation from the Opinion of the Advocate General, Mr. Setalvad, dated the 21st of April 1940, is in my opinion, not opposite to the case. There is no question here involved of land once acquired being again acquired ~~hxxxxxxxxxx~~ for another public purpose. With respect to that opinion, I would say that if a town planning scheme were carried through, and the land vested in different owners in pursuance of the scheme, Government could, if necessary, make another acquisition for a different purpose.

In my opinion, there is nothing to prevent the Government from acquiring the Pranshankhlal Nafatlal Hindu Swimming Bath for a public purpose, viz. the institution of a swimming bath for the whole of the public generally in place of the beneficiaries under the Trust.

VOP. 8-8-35.

Although the desirability of such action is not strictly within the province of this opinion I would, however, like to add that this Bath is at present very well patronised, and affords opportunity for exercise, particularly to a class of women, who would undoubtedly, not take advantage of it if the Pool were open to any one and every one whether men or women It is a marked forward step, in that many who would other wise have not opportunity for healthy exercises are able to have it. While the ideal of non-communalism is an impeccable one, I may be permitted to venture a doubt whether the proposed step of Government would not be untimely.

S.D .

Advocate General.

VGP.

8-6-56.

Office of the R.I.A.

A copy of the Advocate General's opinion No. 12 dated the 26th May 1950, is forwarded herewith to the Revenue Department.

S.D. P.H.Lad.
1/6

o.c.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7479, dated the 2nd June 1950

VGP.

8-6-56.

Office of the R.L.A.

Baroda Land Acquisition Act - sec. 35(8)

Baroda Land Acquisition Rules - Rule 37(8)

Land Acquisition Act, 1894. section 18& 54.

It appears that before the merger of the Baroda State, lands of certain public institutions were acquired under the Baroda Land Acquisition Act and under Rule 37(8) of the Rules made under the Baroda Land Acquisition Act the compensation payable in respect of these lands was not paid to the owner of manager of those institutions but was held in deposit by the Subg. These amounts have been kept in the Bank of Baroda in the Savings Bank Account. The question raised for the R.L.A.'s consideration is whether these amounts can be invested in the National Savings Certificates.

It is true that Rule 37(8) of the Rules made under the Baroda Land Acquisition Act, read with section 35(8) warranted the holding in deposit of the compensation payable to the public institutions on account of the land thereof acquired under the Land Acquisition Act but with the merger of the Baroda State and the consequent application of our law, rule 37(8) and the Baroda Land Acquisition Act are no longer applicable and the law applicable is the Indian Land Acquisition Act 1894, which regulates the acquisition and other proceedings in respect of la land acquisition. The Indian Land

Acquisition Act, 1894, contains no provision similar to section 35(8) in the Baroda Land Acquisition Act. Nor is there any provision in force similar to rule 37(8). Under section 31(2) of the Indian Land Acquisition Act the procedure is prescribed for depositing the amount of compensation in the court in case there is no person competent to alienate the land. Trustees, executors and administrators of religious or charitable trusts are not competent to alienate the land (see Ram Prosanno Mundy v. Secretary of State for India, I.L.R. 40 Calcutta 895). Consequently under the Indian Land Acquisition Act these amounts would have been required to be deposited in court and a reference made under section 18 for the purpose. But the period for making a reference under section 18 seems to have already expired in all these cases. It is, however, presumed that the order relating to the holding in deposit of the amount by the Suba was embodied in the award made by the Land Acquisition Officer in all these cases. If so, that award would be valid until it is set aside under section 54 of the Land Acquisition Act (see Shivrao v. Nagappa I.L.R. 39 Madras 117). Consequently, there would be no legal objection to Government continuing to hold in deposit the amounts of compensation payable to those institutions. These amounts can be invested in National Savings Certificate so that they can earn some interest.

Sd. P.M. Lad.
5/7

O.O.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9415 dated the 6/7/50

VOP.
8-6-56.

Office of the R.L.A.

Land Acquisition Act, 1894, Whether Collector can review an award.

It is presumed that the provisions of the Land Acquisition Act, 1894 were applied in the Kolhapur State. A Collector acting under the Land Acquisition Act is not competent to review his order awarding compensation as section 53 which provides for the application of the Civil Procedure Code does not apply to proceedings before the Collector but only to proceedings before the court (Om Prakash, Land Acquisition Act p. 123). The Collector cannot revise or reopen an award once it has been filed under section 12 of the Act. It would however be open to Government to pay the amount as a matter of grace on getting from the claimant a receipt in full satisfaction of his claim to the additional compensation (vide R.L.A's opinion No. 3680, dated 18-4-1940, printed at page 384 of R.L.A's Digest of Opinions V. Supplement).

Sd. P.H.Lad.
5/8

o.c.

Remembrancer of Legal Affairs.

U.R. re R.D. No. 11175, dated the 7th August 1950

VGP.

8-5-56.

Office of the R.L.A.

Land Acquisition Act, 1894
Gangapur Dam Project
Whether Land Acquisition Officer can declare a suppli mentary award.

It is true that a Collector acting under the Land Acquisition Act, 1894, is not competent to review his order awarding compensation as section 53 which provides for ha the application of the Civil Procedure Code does not apply to proceedings before the Collector but only to proceedings before the Court (Om. Prakash, Land Acquisition Acts page 12 123). The position about the Collector's power to declare a supplementary award is also doubtful. The Collector cannot revise or reopen an award once it has been "filed" under section 12. However, if , Government is satisfied that the claim is genuine, there would be no objection to their making payment as a matter of grace on obtaining from the claimant a receipt in full satisfaction of his claim to the additional compensation on whatever ground (Cf. R.L.A's No. 5620 dt. 12-4-1940, quoted at p. 384 of Suppl V to the Digest of Opinion).

Sd. P.M. Lad.
5/8

o.c.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11176 dated the 7th August 1950.

VOP.
8-6-50.

Office of the R.L.A.

Whether land acquired for Municipality can be transferred to State Transport Corporation.

Land Acquisition Act, 1894 sec. 48.

The R.D. view that the lands notified for acquisition for housing purposes by the Ahmedabad Municipality cannot be handed over to the Bombay State Road Transport Corporation appears to be correct. The change of purpose, that is, from housing purpose by the Ahmedabad Municipality to Corporation is a sufficiently important change which can be said to affect the right of the objectors to notify their objection under section 5A (see R.L.A.'s opinion in G.R.R.D. No. 9831 dated 11-10-39 R.L.A'S opinions Nos. 9609 date 1-11-40; 8330 dated 30-8-1948). When the land is acquired for a Municipality there is simply a taking over by Government but the land actually vests in the Municipality on payment of costs of acquisition and that no transfer from Government to the Municipality is needed. (see 45 Bom 725 Om Prakash's Land Acquisition Act, p.138). On the taking possession of the land in the present case under section 16, the lands will not vest in Government but will vest in the Municipality It will not, therefore, be possible for Government to transfer the lands to the Corporation. Even after the lands are finally vested in the Municipali ty it would not be possible for the Municipality to transfer the lands to the Corporation soon after the acquisition because such a transfer is likely to be challenged on the ground that it was colou rable aquisition of lands on behalf of the Municipality by the Corporation and as much unlawful. (see in reManick Chand Mehata v. Corporation of Calcutta 48 Cal. 916). The only course, therefore appears to be to withdraw these lands from acquisition under section 48 and notify them afresh under section 4 for the Corporation (cf. R.L.A's No 4144, dated 29-4-48, No, 9936 dt. 23-10-43

Sd. P.M. Lad.
18/8

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 11737, dated the 18th August 1950

VOP.K
8-8-56.

Office of the H.L.A.

The view taken by the Motor Transport Controller is correct. In the event of the decision going against Government, the compensation payable for fresh acquisition would be on the basis of the condition in which the property was when it originally passed into the hands of Government. The value of the structures if any, now erected by the State Transport Corporation will not be taken into account in assessing the compensation.

Sd. P.H. Lad.
28/7

e.c.

Remembrancer of Legal Affairs.

U.H. to H.D. NO, 10767, dated the 29th July 1950.

VCP.

8-8-56.

Office of the R.L.A.

R.L.A's opinions No. 6131 dated 4-5-1950 and No. 10767 dated 29-7-1950.

R.L.A.'s opinion No. 6131, dt. 4th May 1950 is in no way inconsistent with his opinion No. 10767, dated 29th July 1950 for in the latter case what was considered was whether, in the event of fresh acquisition of the land Government will have to pay compensation on the basis of the present condition of the land or on the basis of the condition in which the property was when it originally passed into the hands of Government, that is to say, whether the structures now erected by the State Transport Corporation will have to be taken into account in assessing the compensation and the R.L.A held that such structures being erected after the property passed into the hands of Government, the compensation payable would not include the compensation in respect of them. So far as the compensation for the land itself is concerned, it will have to be paid on the basis of its valuation on the date of its notification for acquisition as advised by the R.L.A. in his opinion No. 6131, dated 4th May 1950.

Sd. P.N. Lad 17/8

O.C.

Remembrancer of Legal Affairs.

U.R. to E&D. No. 11745, dated the 18th August 1950.

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Under section 12(2) of the Act In this case the notice under that section was served on the petitioner on the 11th June 1949. The period of six weeks prescribed by section 12(2)

Office of the R.L.A.

Land Acquisition Act, 1894, section 18(2)(b): Application of Shri Jagatsingh Pardeshi of Poona for reference to Court.

Under clause (b) of the proviso to sub-section (2) of section 18 of the Land Acquisition Act, 1894 a person interested who does not accept an award declared by the Land Acquisition Officer can make an application to the Collector for reference to the Court within six-weeks of the receipt of the notice from the Collector (in this case the Land Acquisition Officer) ~~under section 18(2)~~ will have to be counted from that date The Land Acquisition Officer has taken for granted that the period of 6 weeks expired on the 22nd July and not 23rd July as contented by the petitioner. It seems that the Land Acquisition Officer's view is not correct. In calculating the period of 6 weeks the principle underlying section 9(1) of the General Clauses Act, 1897 will have to be followed, and the day on which the notive was served on the claimant wil have to be excluded. The same principle has been enacted in section 12(1) of the Limitation Act 1908. In this view the period of 6 weeks expired on the 23rd July 1949 and not 22nd July 1949 and the application under section 18 made by the claimant on that day would appear to be within the time prescribed. The Special Land Acquisition Officer may therefore be directed to refer the matter to the District Court as prayed for by the petitioner.

2. The Commissioner, Central Division in paragraph 2 of his endorsement at p.105 ante ahs referredto a recent judgement of Bhagwati J. reported in the issue of the Times if India dated 16-2-1950 in which he has expressed the view that the duty of the Land Acquisition Officer, on receipt of an appli-

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an application under section 18(1) is merely to forward a reference to the Court and that he has no power to decide whether an application is time barred. In view of the position stated in paragraph 8 above, however, it does not appear necessary to consider this aspect of the case, and that judgement is moreover under appeal.

Sd/- P.M. Lad.
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O.C.
Remembrancer of Legal Affairs.

U.H. to R.D. No. 11372, dated the 10th August 1950.

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Land Acquisition (Bombay Amendment) Act, 1948 sec 2(i)

The purpose of the acquisition has been notified as a "colony" proposed at Kakrapara Dam site. That colony of settlement cannot be said to have been undertaken for the purpose of "increasing accommodation for housing persons." It was undertaken as an integral part of the whole dam project. Although, therefore, the colony would result in housing persons engaged on the project, it cannot be said to be a housing scheme as defined in section 2(i) of the Land Acquisition (Bombay Amendment) Act, 1948.

R.L. Lad.
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O.O.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15945, dated the 4th October 1950

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Office of the R.L.A.

Land Requisition Act, 1948.

Land requisitioned under the Defence of India Act and the rules made thereunder and continued to be subject to requisition under section 3 of the Requisition Land (Continuance of Powers) Act, 1947, (XXII of 1947) can be acquired under section 5 of the latter Act pro vided conditions stated in sub-section (3) of section 5 are fulfilled. If land is requisitioned under the Bombay Land Requisition Act, 1948 it can be acquired under the Land Acquisition Act, 1894 if the same is required by Government for its permanent use. It is not necessary to derequisition such land before taking steps to acquire the same under the Land Acquisition Act. Remembrancer The view taken in paragraph 2 of Revenue Department note dated the 3rd November 1950 is correct.

S. P.M.Lad.
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O.S.
Remembrancer of Legal Affairs

U.R. to R.D. No. 15875, dated the 14th November 1950

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The contention of Shri Marathe and Shri Kawarkar before the Land Acquisition Officer was that the residents of Dindoshi had a right of way over the cart track starting from that village and leading to the Milk Colony. No such cart track was however, shown in the village maps; and therefore their argument was not upheld by the Land Acquisition Officer. No obligation was, therefore, imposed upon Government to provide a new road in exchange. Under section 16 of the Land Acquisition Act, 1894, when the Collector takes possession of any land it vests absolutely in the Government free from encumbrances. "Encumbrances" includes also rights of way. Even if the public had right of way over the land acquired such right becomes extinguished on the acquisition. (Taylor vs. Collector of Purnea, 14 Cal 423 at 531. Municipal Corporation of the City of Bombay vs. G.I.P. Rly Co. 41 Bombay 291 at p.297 Rashid Allidina vs. Jivan Das Khimji, (1942), /Cal. 488 at 495. Agarwal's Land Acquisition Act, 1946, Edn. p. 134). Even presuming therefore that the public of Dindoshi had right of way across the portion of the land acquired, they cannot now claim to use the same. In this case their claim is unfounded since no such road finds place in the village records. The action of Shri Marathe in cutting the wire fencing put behind Unit. No. 8 in the Milk Colony amounts therefore to criminal trespass within the meaning of that expression in section 441 of the Indian Penal Code. Under that section it is sufficient that a person enters upon property belonging to another and commits an offence. The cutting of the wire fencing would amount to the offence of mischief within section 425 of the Indian Penal Code. The remedy for the Milk Commissioner in this case appears therefore

to be .....

to be to lodge a complaint with the police in respect of these offences. If Shri Marathe has a grievance in respect of a right of way it is open to him to establish his right in a Court of Law.

Sd/- P.M. Lad.
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Remembrancer of Legal Affairs.

U.R. to Milk Commissioner No. 16144, dated the 16th November 1950.

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R.I. No. 24917 dt. 20-12-50

Submitted with ref. to para. 3 of the R.D. office note at p. 53 ante. In this case two pieces of land measuring 2326 74 Sq. yards and 2381 Sq. yds. out of S.N. 505 of Mazgaon Division were notified under secs. 4 and 6 of the Land Acquisition Act, 1894, in February June 1948 as they were needed by the G.I.P.Rly Administration for staff quarters. The L.A. Officer determined the amount of compensation at Rs. 1, 67, 192/- by his order dt. 14-9-49. Before the payment was made and the possession of the land was taken the the G.I.P.Rly decided to withdraw from the acquisition. Sanction was accordingly granted by the Govt. to the withdrawal from acquisition under s ag. 48 of the Land Acquisition Act (p.37ante). whereupon the claimant put forth a claim of Rs. 16,214/- on account of damage suffered by him(sec. 48(2) The Collector of Bombay was inclined to grant this claim. As the amount of damages claimed was heavy, the Rly. Administration again thought of getting the land and an agreement has been arrived at between the Admn, and the owner of the land whereunder the owner us prepared t part with the land on payment of the compensation previously fixed by the L.A. Officer plus interest at 5 per cent on the amount from 14th Sept. 1949 (the date of the award) etc. The Rly Admn. has accordingly requested the L.A. Officer to revive the land acq aition proceedings and cancel the withdrawal as fresh acquisition proceedings de novo would involve lot of time and enhance the amount of interest payable. The R.D. considers that it would not be feasible to revive the proceedings; but suggests that since the owner is agr eeable the Rly. should settle that since the owner is agreeable the Rly. should settle the matter without the intervention of the Land Acqui. Officer as a sale. The R.L.A. is requested to advise whether the course suggested by the R.D. is feasible.

S.D.
23- 12

Reply may be:- seen/noted returned the view as A of R.D. office at 53 ante is correct.

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R.K. 27-12

U.O.R. to R.D. No 18379 dt. 29/12/50

Office of the R.L.A.

It appears that certain lands and buildings, Government and private are required by the Dealwara temples authorities for clearing the surroundings of ugly buildings and exposing to view prominently the temples. The Charity Commissioner states that these temples being monuments of national importance have been declared as protected monuments under the Ancient Monuments Preservation Act, 1904 and considering the purpose for which the lands and buildings are required the purpose would be 'public purpose' which the meani meaning of the Land Acquisition Act, 1894. The R.L.A. is requested to advise.

2. "Ancient monuments" as defined in section 2(1)(b) of the Ancient Monuments Preservation Act 1904 means any structure, erection or monument etc. which is of historical, archaeological or artistic interest or any remains thereof and includes such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise* the Union Government to declare by notification an ancient monument to be a protected monument. Section 10(1) provides that if the Union Government apprehands that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, the Union Government may direct the State Government to acquire it under the provisions of the Land Acquisition Act. 1894, as if the preservation of a protected monument were a 'public purpose' within the meaning of that Act. It is ascertained from the Curator of the Prince of Wales Museum that the Delwara Temples though they may be considered to be ancient monuments were never notified as protected monuments Since the Delwara temples are not declared as protected monuments,

Preserving Such monument. See. 3(1) Empowers.

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section 10 cannot be availed of for acquisition of any land around them under this section [see R.L.A's opinion No 1095 dt. 30-4-1917 Copy enclosed] In Amulya C. Banerji v. Corporation of Calcutta, 49 Cal. 832 (P.C.). provision for suitable accommodation of pilgrims crowding around about a temple is held to be a public purpose.

2. The purposes mentioned by the United Province Committee on Hindu Religious and Charitable Endowments (1931) at p.110 of the report, which have been quoted in the note recorded by the Charity Commissioner, would seem to be held public purposes. If the land is required for such purposes, Government can acquire it under the provisions of the Land Acquisition Act, 1894 and may later on transfer it to the Shwetamber Jain Temple Committee. In any case it may be useful to undertake legislation even for acquisition for such purposes not only in respect of this temple but of similar other temples such as Vithoba Temple at Pandharpur and others where pilgrims congregate inlarge numbers and find it inconvenient even to squat near the temple precincts.

Sd/- P.M. Lad.
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Remembrancer of Legal Affairs.

U.R. to RTD. No. 17219, dated the 8th Dec. 1950

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